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2 **THE HELMS LAW FIRM, P.L.C.**
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4 Phoenix, Arizona 85004
5 Telephone: (602) 358-2060
6 Fax: (602) 358-2055

7 Attorneys for Plaintiff Best Western
8 International, Inc.

9
10 **IN THE UNITED STATES DISTRICT COURT**
11
12 **FOR THE DISTRICT OF ARIZONA**

13 Best Western International, Inc., an
14 Arizona non-profit corporation,

15 No. CV 08-1932-PHX-HRH

16 Plaintiff

17
18 **AFFIDAVIT IN SUPPORT OF**
19 **APPLICATION FOR DEFAULT**
20 **JUDGMENT**

21 vs.

22 Horizon Hospitality, L.L.C., an Alabama
23 limited liability company; and Vijay Patel,
24 an individual,

25 Defendants.

26 STATE OF ARIZONA)
15) ss.
16 County of Maricopa)

17 Cheryl Pollack, being first duly sworn upon her oath, deposes and says:

18 1. I am Director of Member Services Administration of BEST WESTERN
19 INTERNATIONAL, INC., an Arizona non-profit corporation.

20 2. I have personal knowledge of the facts set forth in this Affidavit and am
21 authorized by BEST WESTERN INTERNATIONAL, INC. ("BEST WESTERN") to
make, execute and file this Affidavit.

22 3. On or about December 20, 2006, Horizon Hospitality, L.L.C., an Alabama
23 limited liability company; and Vijay Patel executed and delivered to BEST WESTERN a
24 Membership Application and Agreement requesting membership in the BEST
25 WESTERN organization with respect to the Birmingham Airport Hotel located in or near
Birmingham, Alabama (the "Hotel"). BEST WESTERN accepted this application and
granted Horizon Hospitality, L.L.C., and Vijay Patel membership in the BEST
WESTERN organization with respect to the Hotel.

1 5. At all relevant times, Defendants have been and are the owners of the
2 Hotel, and as such, are fully aware of their contractual obligations with respect to its
3 BEST WESTERN membership.

4 6. In part, the Membership Agreements are contracts to furnish Best Western
5 membership services and supplies to Defendants. Pursuant to the terms of the
6 Membership Agreement, Defendants agreed to pay promptly, when due, all fees and
7 assessments as required by the terms of the Best Western Articles of Incorporation,
8 Bylaws and Rules and Regulations.

9 7. Subsequent to entering into the Membership Agreement, Defendants were
10 provided with Best Western's customary membership services and supplies.
11 On or about February 20, 2008, Best Western terminated defendants' Best Western
12 membership for failure to maintain minimum quality standards at the Hotel and failure to
13 comply with the Best Western Articles and Bylaws, and Best Western Rules and
14 Regulations. Pursuant to such termination, Best Western advised that Defendants needed
15 to discontinue use of the Best Western Marks.

16 8. Attached hereto as **Exhibit A** and incorporated herein are billing statements
17 identifying the charges to Defendants' account and the dates and amounts incurred. The
18 balance of the account owed to Best Western International, Inc. by Defendants as of
19 December 1, 2008, was \$129,082.79, plus interest thereon at the rate of 1.5% per month
thereafter.

20 9. After repeated requests by BEST WESTERN, Defendants have refused to
21 cease and desist from use of the name, signage and membership mark of "BEST
22 WESTERN." The Defendants continued to hold themselves out to the public as a "BEST
23 WESTERN" member, despite their termination of the BEST WESTERN membership in
24 February, 2008, and despite notices regarding termination. Attached hereto as **Exhibit
25 "B"** are copies of photographs taken on March 13, 2008, depicting Defendants'
26 continued use of the Best Western name and logos.

27 10. On April 30, 2008, a representative of BEST WESTERN again went to the
28 Hotel. As part of his duties, such representative took photographs of signs and/or
29 collateral items displayed in connection with the Hotel. Attached hereto as **Exhibit "C"**
30 are copies of photographs taken on May 17, 2008, depicting Defendants' continued use
31 of the Best Western name and logos. On October 29, 2008, a representative of BEST
32 WESTERN again went to the Hotel. As part of his duties, such representative took
33 photographs of signs and/or collateral items displayed in connection with the Hotel.
34 Attached hereto as **Exhibit "D"** are copies of a photograph taken on October 29, 2008,
35 depicting Defendants' continued use of the Best Western name and logos.

11. Pursuant to paragraph 24 of the Membership Agreement, BEST WESTERN may claim liquidated damages from Defendants in an amount equal to fifteen percent (15%) of the mean of Defendants' room rates per day multiplied by the total number of rooms for every day Defendants continue to use the BEST WESTERN Marks in excess of the fifteen (15) day period allowed. Defendants' hotel property has 198 rooms at an average daily room rate, as published by the defendants in the Best Western Travel Guide, of \$115.00. The information published in the Best Western Travel Guide was provided for publication by the defendants. A copy of that portion of the 2008 Travel Guide relating to the Hotel is attached hereto as Exhibit "E".

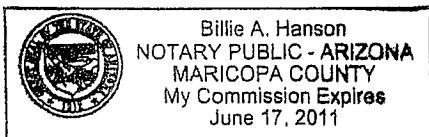
12. Using the information provided to Best Western by Defendants concerning room rates and numbers of rooms, the formula for liquidated damages to the present, calculates to \$3,415.50 per day. Applying such amounts to the number of days following termination of membership of the hotel property and through October 29²⁰⁰⁸, results in liquidated damages in the amount of \$802,462.50. *CF*

13. Vijay Patel is believed to be a member of Defendant Horizon Hospitality, L.L.C. Vijay Patel is not a minor, and to the best of my knowledge is not in the military or otherwise exempted from a default judgment under the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501, *et seq.*

Dated this ____ day of February, 2009.

Cheryl Pollack
Cheryl Pollack

SUBSCRIBED AND SWORN to before me this 18th day of February, 2009.



My Commission Expires:

Notary Public

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EXHIBIT A



STATEMENT

Best Western International, Inc

P.O. Box 53505
 PHOENIX, ARIZONA 85072-3505
 (602) 957-4200

ACCOUNT NO.

DATE:
 MO. DAY YR
 06 | 01 | 08

BIRMINGHAM AIRPORT HOTEL
 ATTN: MR. ANUP PATEL
 3239 POINT MALLARD PKWY
 PRICEVILLE, AL 35601

PLEASE CUT HERE AND RETURN THIS STUB WITH YOUR REMITTANCE

\$ _____

DATE	REFERENCE	DESCRIPTION	CHARGES	PAYMENTS	BALANCE
		MEMBER NO. 01-110 PREVIOUS BALANCE			115,780.91
05 12 08	0005955033	FREQUENT FLYERS - SEE ATTACHED	4.50		
05 12 08	0005957196	GCC CHARGE 03-26-08 - 04-25-08	213.25		
05 16 08	FC-67344	Service Charge on Balances 45 Days and Older	1,705.66		
05 22 08	0005978374	MAY08 GDS - SEE ATTACHED	91.20		
05 22 08	0005980629	MAY08 3RD PTY INTERNET FEES	13.20		
CURRENT	OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	OVER 120 DAYS	PLEASE PAY AMOUNT BELOW
2,027.81	2,077.98	906.96	81,590.35	31,205.62	117,808.72
					NEW BALANCE

Terms: DUE AND PAYABLE UPON RECEIPT.

All accounts 45 days past due and older are subject to a 1 1/2% late charge
 per month, which is an ANNUAL PERCENTAGE RATE OF 18%

STATEMENT**Best Western International, Inc**

P.O. Box 53505
 PHOENIX, ARIZONA 85072-3505
 (602) 957-4200

ACCOUNT NO.

DATE:

MO. DAY YR

01110

07 01 08

BIRMINGHAM AIRPORT HOTEL
 ATTN: MR. ANUP PATEL
 3239 POINT MALLARD PKWY
 PRICEVILLE, AL 35601

PLEASE CUT HERE AND RETURN THIS STUB WITH YOUR REMITTANCE

\$ _____

DATE	REFERENCE	DESCRIPTION	CHARGES	PAYMENTS	BALANCE
		MEMBER NO. 01-110 PREVIOUS BALANCE			117,808.72
06 13 08	0006015576	GCC CHARGE 04-26-08 - 05-25-08	341.37		
06 17 08	FC-67788	Service Charge on Balances 45 Days and Older	1,736.84		
06 19 08	0006028512	FREQUENT FLYERS - SEE ATTACHED	9.63		
CURRENT	OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	OVER 120 DAYS	PLEASE PAY AMOUNT BELOW
2,087.84	2,027.81	2,077.98	906.96	112,795.97	119,896.56
					NEW BALANCE

Terms: DUE AND PAYABLE UPON RECEIPT.

All accounts 45 days past due and older are subject to a 1 1/2% late charge
 per month, which is an ANNUAL PERCENTAGE RATE OF 18%

STATEMENT**Best Western International, Inc**

P.O. Box 53505
 PHOENIX, ARIZONA 85072-3505
 (602) 957-4200

ACCOUNT NO.

DATE:
 MO. DAY YR
 01110 09 01 08

BIRMINGHAM AIRPORT HOTEL
 ATTN: MR. ANUP PATEL
 3239 POINT MALLARD PKWY
 PRICEVILLE, AL 35601

PLEASE CUT HERE AND RETURN THIS STUB WITH YOUR REMITTANCE

\$ _____

DATE	REFERENCE	DESCRIPTION	CHARGES	PAYMENTS	BALANCE
		MEMBER NO. 01-110 PREVIOUS BALANCE			121,729.66
08 18 08	FC-68591	Service Charge on Balances 45 Days and Older	1,798.57		
CURRENT	OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	OVER 120 DAYS	PLEASE PAY AMOUNT BELOW
1,798.57	1,833.10	2,087.84	2,027.81	115,780.91	123,528.23
					NEW BALANCE

Terms: DUE AND PAYABLE UPON RECEIPT.

All accounts 45 days past due and older are subject to a 1 1/2% late charge
 per month, which is an ANNUAL PERCENTAGE RATE OF 18%

**Best Western International, Inc**

P.O. Box 53505
 PHOENIX, ARIZONA 85072-3505
 (602) 957-4200

ACCOUNT NO.**DATE:**

MO.	DAY	YR
10	01	08

BIRMINGHAM AIRPORT HOTEL
 ATTN: MR. ANUP PATEL
 3239 POINT MALLARD PKWY
 PRICEVILLE, AL 35601

PLEASE CUT HERE AND RETURN THIS STUB WITH YOUR REMITTANCE

\$ _____

DATE	REFERENCE	DESCRIPTION	CHARGES	PAYMENTS	BALANCE
		MEMBER NO. 01-110 PREVIOUS BALANCE			123,528.23
09 17 08	FC-68954	Service Charge on Balances 45 Days and Older	1,826.07		
CURRENT	OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	OVER 120 DAYS	PLEASE PAY AMOUNT BELOW
1,826.07	1,798.57	1,833.10	2,087.84	117,808.72	125,354.30
					NEW BALANCE

Terms: DUE AND PAYABLE UPON RECEIPT.

All accounts 45 days past due and older are subject to a 1 1/2% late charge
 per month, which is an ANNUAL PERCENTAGE RATE OF 18%

STATEMENT**Best Western International, Inc**

P.O. Box 53505
PHOENIX, ARIZONA 85072-3505
(602) 957-4200

ACCOUNT NO.

DATE:

MO. DAY YR

01110

11 01 08

BIRMINGHAM AIRPORT HOTEL
ATTN: MR. ANUP PATEL
3239 POINT MALLARD PKWY
PRICEVILLE, AL 35601

PLEASE CUT HERE AND RETURN THIS STUB WITH YOUR REMITTANCE

\$ _____

DATE	REFERENCE	DESCRIPTION	CHARGES	PAYMENTS	BALANCE
10 17 08	FC-69412	MEMBER NO. 01-110 PREVIOUS BALANCE			125,354.30
		Service Charge on Balances 45 Days and Older	1,853.05		
CURRENT	OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	OVER 120 DAYS	PLEASE PAY AMOUNT BELOW
1,853.05	1,826.07	1,798.57	1,833.10	119,896.56	127,207.35
					NEW BALANCE

Terms: DUE AND PAYABLE UPON RECEIPT.

All accounts 45 days past due and older are subject to a 1 1/2% late charge
per month, which is an ANNUAL PERCENTAGE RATE OF 18%

EXHIBIT B





03/13/2008

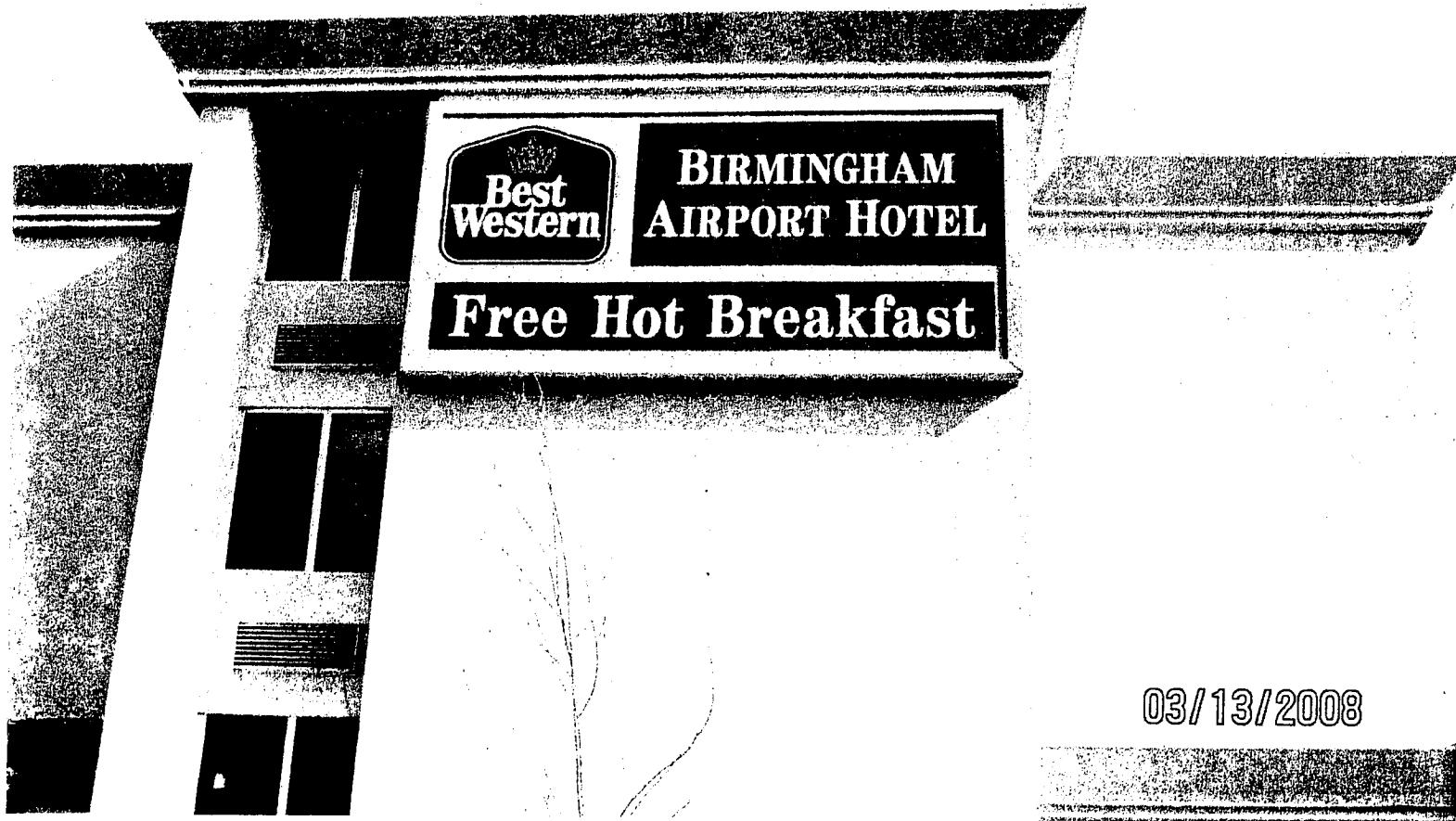


EXHIBIT C



05/17/2008



Best
Western

BIRMINGHAM
AIRPORT HOTEL

Free Hot Breakfast

05/17/2008

EXHIBIT D



10/29/2008 17:32

EXHIBIT E



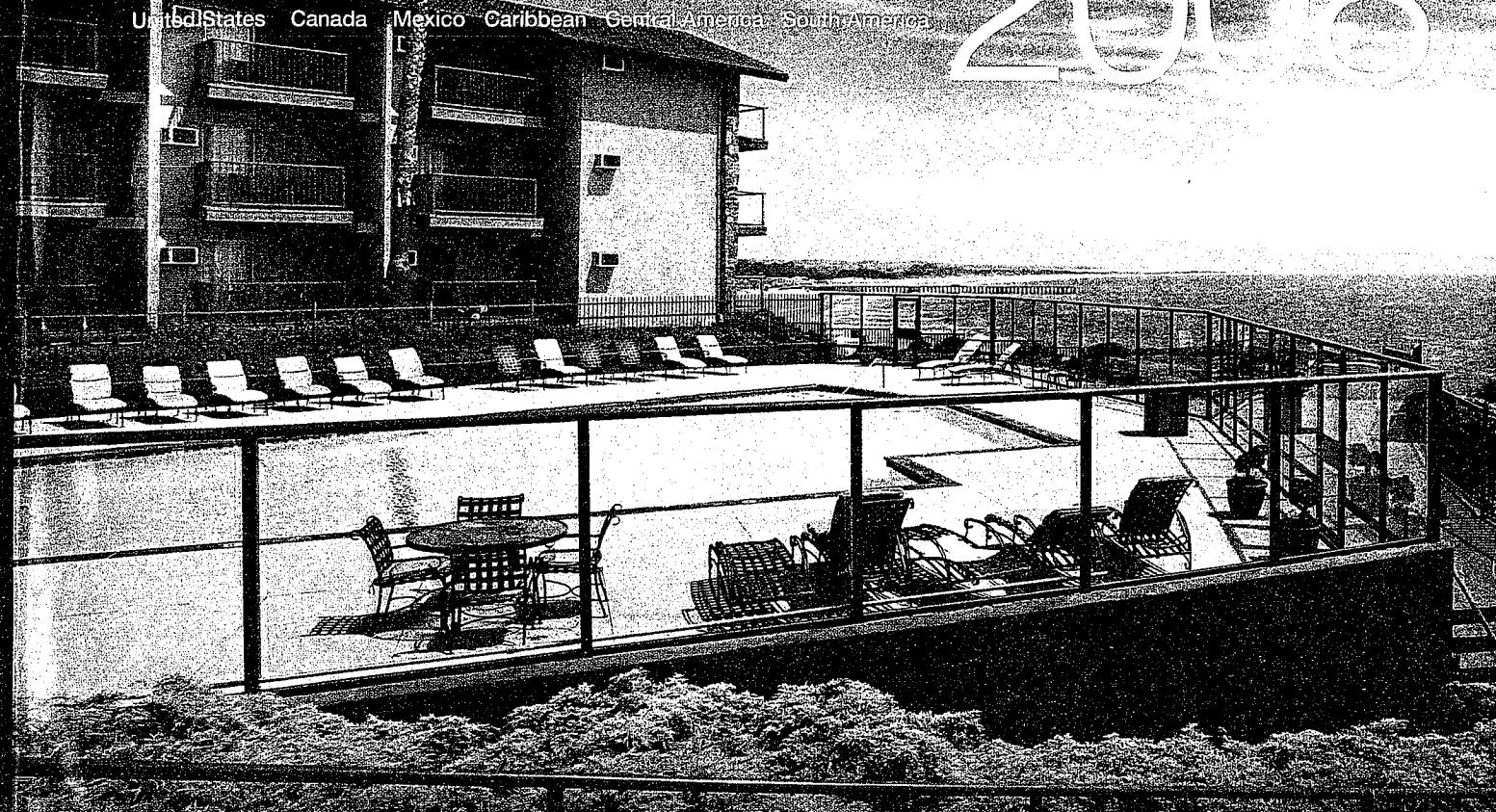
The World's Largest Hotel Chain.®

Best Western 2005

United States Canada Mexico Caribbean Central America South America

Hotel Guide and Road

Map



bestwestern.com®

Call 1.800.WESTERN® (1.800.937.8376) or your travel professional.

Each Best Western® hotel is independently owned and operated.



United States

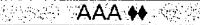
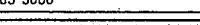
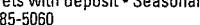
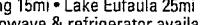
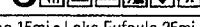
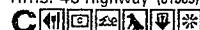
ALABAMA

BW Abbeville Inn

127 US Hwy 431 South, Abbeville, AL 36310 Tel: 334-585-5060

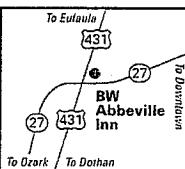
Seasons 1PRs 2PRs
1/1-12/31 55-84 59-84

Rms: 40 Highway (01065)



Leisure: Golf 10mi • Fishing, hunting 15mi • Lake Eufaula 25mi
General: Newly remodeled • Microwave & refrigerator available • HBO • Fax • In-room hairdryers • Pets with deposit • Seasonal pool • High-speed Internet • FAX: 334-585-5060

Abbeville



Directions: Hwy 431 south. Junction Hwy 27 & Hwy 431. Next to Hardee's and West Point Stevens.

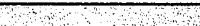
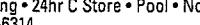
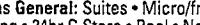
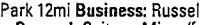
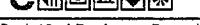
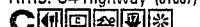
BW Horseshoe Inn

AAA♦♦

3146 Hwy 280, Alexander City, AL 35010 Tel: 256-234-6311

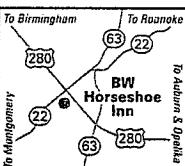
Seasons 1PRs 2PRs
1/1-12/31 69-75 69-75

Rms: 64 Highway (01087)



Leisure: Lake Martin, Wind Creek Park 12mi Business: Russell Corp 1blk • Wireless Internet in all rooms General: Suites • Micro/fridge • Bass boat hookups • At door parking • 24hr C Store • Pool • No pets • Renovated rooms • FAX: 256-234-6314

Alexander City



Directions: Located at intersection Hwy 280 at Al. 22, 61mi SE of Birmingham, 41mi west of Auburn & Opelika, 44mi NE of Montgomery.

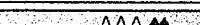
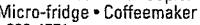
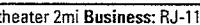
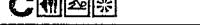
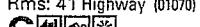
BW Andalusia Inn

Andalusia

305 West Bypass, Andalusia, AL 36420 Tel: 334-222-9993

Seasons 1PRs 2PRs
1/1-5/31 65-80 65-80
6/1-8/31 70-85 70-85
9/1-12/31 65-80 65-80

Rms: 41 Highway (01070)



Leisure: Antique shops, museum, theater 2mi Business: RJ-11 phone jacks • Free high-speed Internet access • Fax • Copier General: Outdoor seasonal pool • Micro-fridge • Coffeemaker • Jacuzzi® hot tub rooms • FAX: 334-222-4551

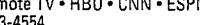
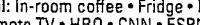
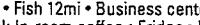
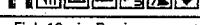
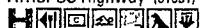
BW Athens Inn

AAA♦♦

139 Hwy 72 East, PO Box 1168, Athens, AL 35612 Tel: 256-233-4030

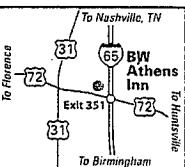
Seasons 1PRs 2PRs
1/1-12/31 59-99 69-99

Rms: 83 Highway (01051)



Leisure: NASA Space Center 15mi • Fish 12mi • Business center on-site • Hi-speed Internet General: In-room coffee • Fridge • Micro • Seasonal pool May-Oct • 25in remote TV • HBO • CNN • ESPN • Small pets w/\$10 fee • FAX: 256-233-4554

Athens



Directions: Midway between Nashville & Birmingham on NW corner of Hwy 72 & I-65. Exit 351. Easy on/off access.

BW of Atmore

AAA♦♦

Atmore

6141 Hwy 21, Atmore, AL 36502 Tel: 251-368-8182

Seasons

1PRs

2PRs

1/1-12/31

58-64

63-70

Rms: 88 Highway (01040)

